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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,490	02/02/2001	Manfred Dombek	31512-168231	6657

7590 08/29/2002
VENABLE
P.O. Box 34385
Washington, DC 20043-9998

EXAMINER

LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 08/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,490

Applicant(s)

DOMBEK, MANFRED

Examiner

Carlos Lopez

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2002 .
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3 .
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____ .
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of claims 12-28 in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "60" has been used to designate both endless band at page 31 line 14 and a pulley at page 34 line 13. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: element 65 in figure 5. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: Page 42 line 20 omits the date and serial number of the incorporated application titled "Method of and apparatus for increasing the permeability of wrappers of rod-shaped articles".

Appropriate correction is required.

It is noted to applicant that the instant application was filed on 2/2/02 while the invention titled "Method of and apparatus for increasing the permeability of wrappers of rod-shaped articles" was filed on 2/5/01. Applicant is asked to provide a serial number of the referenced pending application and it is referred to MPEP 608.01(p)¹.

Claim 23 objected to because of the following informalities: misspelling of the word "section". Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 1) Claims 12-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "the type" lacks antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 2) Claims 12-16, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Barbe et al (US 4,781,204). Barbe et al disclose an apparatus for manipulating and

¹ Since a disclosure must be complete as of the filing date, subsequent publications or subsequently filed applications cannot be relied on to establish a constructive reduction to practice or an enabling disclosure as of the filing date. *White Consol. Indus., Inc. v.*

changing the permeability of cigarette wrappers. The apparatus comprises a rolling unit having a channel defined by movable first surface (17) and second movable surfaces (4), means for feeding into the inlet of the channel a series of products (40) and means for changing the permeability of the cigarette wrappers (34).

As for claim 27, it is inherent the rotary conveyor would includes means to remove and fill its flutes in order to perforated successive cigarettes as disclosed by Barbe et al.

3) Claims 12-17, 20,21, 23, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Hinzmann (US 3,483,873). Hinzmann discloses an apparatus for manipulating and changing the permeability of cigarette wrappers. The apparatus comprises a rolling unit having a channel defined by endless band (38) and stationary rolling member (33), means for feeding into the inlet of the channel a series of products (36) and means for changing the permeability of the cigarette wrappers (needles 29). As for claim 16 the endless band (38) is in the shape of a rotary drum conveyor. As for claim 17, the window is where the perforating means (29) protrude from the stationary rolling member (33). As for claim 23, endless band (38) comprises a plurality of sections beginning from the top angle sector of rolling member (33) to a bottom angle sector of rolling member (33) and wherein the rolling unit includes a means for deflecting one section of the endless band (Element 57).

As for claim 27, the centrifugal force and gravity result in the means for ejecting the products from flutes (34) of the stationary rolling member onto flanges (41).

4) Claims 12-16, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Gretz et al (US 4,249,545). Gretz et al disclose an apparatus for manipulating and changing the permeability of cigarette wrappers. The apparatus comprises a rolling unit having a channel defined by movable first (27) and second movable surfaces (22) and means for changing the permeability of the cigarette wrappers (21). The means for feeding products into the inlet of the channel are inherent in order to provide a successive perforated cigarettes as disclosed by Gretz et al.

As for claim 27, it is inherent the rotary conveyor would includes means to remove and fill its flutes (26) in order to perforated successive cigarettes as disclosed by Gretz et al.

5) Claims 12-17, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Hinzmann (4,090,826). Hinzmann discloses an apparatus for manipulating and changing the permeability of rod shaped components having wrappers. The apparatus comprises a rolling unit having a channel defined by a rotary drum conveyor (24) and stationery rolling member (25), means for feeding into the inlet of the channel a series of products (22) and means for changing the permeability of the cigarette wrappers (needles 46). As for claim 17, the window is where the perforating means (46) protrude from the stationary rolling member (25). As for claim 27, the rotary conveyor (24) includes conveyor (26) for removing the products from the flutes (37) of rotary conveyor (24).

6) Claims 12-16, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Heitmann (4,648,412). Heitmann discloses an apparatus for manipulating and

changing the permeability of rod shaped components having wrappers. The apparatus comprises a rolling unit having a channel defined by a rotary drum conveyor (3) and stationary rolling member (7), and means for changing the permeability of the cigarette wrappers (10). The means for feeding products into the inlet of the channel are inherent in order to provide successive perforated cigarettes. As for claim 27, the rotary conveyor (3) inherently includes means for removing the products from the flutes (6) of rotary conveyor (3).

7) Claims 12-17,20-22,24-26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Heitmann (4,281,670). Heitmann discloses an apparatus for manipulating and changing the permeability of rod shaped components having wrappers. The apparatus comprises a rolling unit having a channel defined by a rotary drum conveyor (602) and stationary rolling member (606), and means for changing the permeability of the cigarette wrappers (616). The means for feeding products into the inlet of the channel are inherent in order to provide successive perforated cigarettes. As for claim 17, the rolling member (606) includes a window (606a). As for claim 27, the rotary conveyor (424) inherently includes means for removing the products from the flutes (438B) of rotary conveyor (424). As for claim 20-21 the rolling unit includes three endless bands (439a-c) forming at least one surface and wherein the stationary rolling member (424) constituted a second rolling surface of a rolling channel. The rolling member includes a window communicating with a portion of the channel to change the permeability of the wrappers with laser (451) as shown in figure 13. As for claim 22,24-

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26, as shown in figure 14, the laser beams (450a-b) propagate along a path extending between said spaced apart sections of the three endless bands.

8) Claims 12-17, 20-23, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Arthur (US 5,148,818). Arthur discloses an apparatus for manipulating and changing the permeability of cigarette wrappers. The apparatus comprises a rolling unit having a channel defined by endless bands (33,34) and stationary rolling member (10), means for feeding into the inlet of the channel a series of products (16) and means for changing the permeability of the cigarette wrappers (laser 19). As for claim 16 the endless bands (33,34) are in the shape of a rotary drum conveyor as shown in Fig. 1. As for claim 17, the window is formed by (10a-B) of stationary rolling member (10). As for claims 23 and 27, endless bands (33,34) comprises a plurality of sections beginning from the top angle sector of rolling member (10) to a bottom angle sector of rolling member (10) and wherein the rolling unit includes a fluted drum (15) that deflects one section of the endless bands in order to ejecting tobacco products of the stationary rolling member (10). As for claim 22, endless bands (33,34) are spaced apart in order for laser beams (22,21) to perforate the wrappers.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9) Claims 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barbe et al (US 4,781,204), or alternatively over Gretz et al (US 4,249,545), or alternatively over Hinzmann (US 4,090,826), or alternatively over Heitmann (US 4,648,412), or alternatively over Heitmann (US 4,281,670) as applied to claims 12, and 27 above, and further in view of Schur (US 2,952,105). Claim 28 additionally defines the expelling means of the rotary conveyor as pushers in a radially direction of the rotary conveyor which are not disclosed in Barbe, Gretz, Hinzmann, or Heitmann. Schur teaches of an ejector bar having a radial movement in relation to a rotary conveyor as suitable means for ejecting filter tip sections from the flutes of a rotary conveyor (Column 2, lines70-72). At the time the invention was made it would have been obvious to a person of ordinary skill in the art to have included ejector bars at the flutes of a rotary conveyor of Barbe, Gretz, Hinzmann or Heitmann in order to eject tobacco products from the flutes to a second conveyor as taught by Schur.

Allowable Subject Matter

Claims 18 and 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The cited prior art does not disclose or reasonably suggest two endless belt for the rolling of a wrapper and changing the permeability during rolling. The cited prior art discloses changing the permeability during rolling via a rotary conveyor and an endless belt or rolling induced by a two rotary conveyors but fails to disclose or reasonably

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suggest the changing of permeability of a wrapper during rolling performed by two endless belts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is (703) 605-1174. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7718 for regular communications and (703) 305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.


STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

C.L
August 23, 2002